

LSK&D #: 079100-8804 /1069473

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MANUEL ORTIZ

Plaintiff,

-against-

FIRST AMERICUS ENTERPRISE, INC., and
NATHAN BUCK

Defendants.
-----X

Docket No.: 08 CV 6244

VERIFIED ANSWER

**TRIAL BY JURY
DEMANDED**

Defendants, FIRST AMERICUS ENTERPRISE, INC., and NATHAN BUCK, by their attorneys, LESTER SCHWAB KATZ & DWYER, LLP, answering plaintiff's Verified Complaint dated July 9, 2008 respectfully state as follows:

1. Deny each and every allegation contained in paragraphs "1", "7", "35", "36", "37", "38", "39", "40", "41", "42", "43" and "44" of the Verified Complaint.

2. Deny each and every allegation contained in paragraphs "2", "11", "12", "13", "14", "16", "17" and "18" of the Verified Complaint, but beg leave to refer all questions of law to the Court at the trial of this action.

3. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "3", "26", "27", "29" and "31" of the Verified Complaint.

4. Admit the allegations contained in paragraphs "4", "5", "6", "8", "9", "10", "15", "19", "20", "21", "22", "23", "24", "25", "28" and "30" of the Verified Complaint.

5. Deny each and every allegation contained in paragraphs "32", "33" and "34" of the Verified Complaint except admit that the aforementioned vehicles contacted each other on April 2, 2007.

AS AND FOR A FIRST SEPARATE DEFENSE

6. That any injuries and/or damages sustained by the plaintiff, as alleged in the Verified Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AS AND FOR A SECOND SEPARATE DEFENSE

7. The plaintiff was negligent in not wearing a seat belt at the time of the occurrence and under the applicable law may not recover damages for those injuries which plaintiff would not have received if a seat belt had been worn.

AS AND FOR A THIRD SEPARATE DEFENSE

8. The accident described in the Verified Complaint did not result in a "serious injury" to plaintiff as so defined in and by Section 5102(d) of the Insurance Law of the State of New York, and as such, plaintiff had and has no right to institute, maintain or prosecute this action and are barred from doing so.

9. The plaintiff did not sustain serious injury as defined by Section 5102(d) [formerly Section 671 (4)a and (4)b] of the Insurance Law of the State of New York, and his exclusive remedy therefore is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

AS AND FOR A FOURTH SEPARATE DEFENSE

10. In the event plaintiff herein recovers a verdict for personal injury, the amount of such recovery should be reduced by any payment that plaintiff received under the medical payment provisions of any policy of automobile liability insurance.

AS AND FOR A FIFTH SEPARATE DEFENSE

11. The liability of these defendants, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

AS AND FOR A SIXTH SEPARATE DEFENSE

12. In the event plaintiff recover a verdict or judgment against these defendants, then said verdict or judgment must be reduced pursuant to FRCP by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.

AS AND FOR A SEVENTH SEPARATE DEFENSE

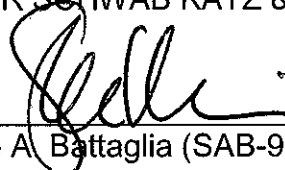
13. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

WHEREFORE, the answering defendants demand judgment dismissing the Verified Complaint of the plaintiff, together with the attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
August 25, 2008

Respectfully submitted,

LESTER SCHWAB KATZ & DWYER, LLP



Sandro A. Battaglia (SAB-9193)
Attorneys for Defendants
FIRST AMERICUS ENTERPRISE, INC., and
NATHAN BUCK
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TO:

Steven J. Shanker, Esq.
SHANKER & SHANKER, P.C.
386 Park Avenue South - Suite #1914
New York, New York 10016
(212) 490-0046
Your File No.: 1919-07

ATTORNEY'S VERIFICATION

The undersigned affirms the following statement to be true under the penalty of perjury pursuant to FRCP.

That he is Of Counsel to the firm of LESTER SCHWAB KATZ & DWYER, LLP, attorneys for defendants, FIRST AMERICUS ENTERPRISE, INC., and NATHAN BUCK.

That he has read the foregoing document and knows the contents thereof, and that the same is true to the knowledge of your deponent except as to the matters therein alleged upon information and belief and that as to those matters he believes them to be true.

That the reason why this affirmation is being made by your deponent and not by the said defendant is that said corporation does not maintain an office with an officer having knowledge of the facts in the county where your affiant's firm maintains its offices.

That the source of your deponent's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with said corporation.

Dated: New York, New York
August 25, 2008



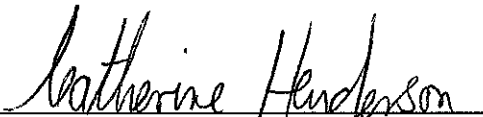
Sandro A. Battaglia

Declaration of Service

I served the annexed VERIFIED ANSWER by first-class mail on the following persons on August 26, 2008:

Steven J. Shanker, Esq.
SHANKER & SHANKER, P.C.
386 Park Avenue South - Suite #1914
New York, New York 10016
Attorneys for Plaintiff
(212) 490-0046
Your File No.: 1919-07

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 26, 2008.


CATHERINE HENDERSON